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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

**MARC SPITZER, CHAIRMAN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES**

2004 MAR 16 P 4: 36

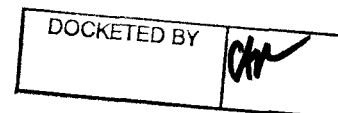
AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF  
ALLTEL COMMUNICATIONS, INC. FOR  
DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER  
PURSUANT TO SECTION 214(e)(2) OF THE  
COMMUNICATIONS ACT OF 1934

Docket No. T-03887A-03-0316

Arizona Corporation Commission  
**DOCKETED**

MAR 16 2004



**POST HEARING BRIEF OF  
ALLTEL COMMUNICATIONS, INC.**

**I. INTRODUCTION AND DISCUSSION OF SERVICE AREAS AT ISSUE**

ALLTEL Communications, Inc. ("ALLTEL") is a cellular service provider operating in Arizona. On May 19, 2003, ALLTEL filed with the Arizona Corporation Commission ("Commission" or "ACC") its Application for Designation as an Eligible Telecommunications Carrier ("ETC") ("Application"). The Arizona Local Exchange Carriers Association ("ALECA"), Table Top Telephone Company, and Arizona Telephone Company intervened in this proceeding (collectively referred to herein as the "rural ILEC Intervenors.").

ALLTEL's Application seeks ETC designation pursuant to §214(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), solely for purposes of receiving federal universal service support in Arizona. (Krajci Direct Testimony (Ex. A-2) at 2, lines 6-7) ALLTEL applied for ETC designation throughout its Arizona licensed service areas of #26 Phoenix MSA, #77 Tucson MSA, #319 AZ RSA 2, and #332 AZ RSA 5. (Application (Ex. A-1) at 1) These licensed service areas include the entirety of the following counties: Maricopa, Pinal, Gila, Pima, Yavapai, and Coconino. (Staff Report (Ex. S-1) at 2) ALLTEL also requested that the Commission redefine the service areas for the following partial service areas: Arizona Telephone Co., CenturyTel of the Southwest, Inc., Midvale Telephone Exchange, Inc., Navajo Communications, Co., South Central Utah Telephone Assoc., and Table Top Telephone Co. (Application (Ex. A-1) at 7) The application sought ETC in both rural and non-rural wire centers. (Krajci Direct Testimony (Ex. A-2) at 6, lines 21-24). The non-rural wire centers are set forth in Exhibit C to the Application and the rural wire centers are identified in Exhibit A-3. As demonstrated by the Application, ALLTEL's prefiled direct and rebuttal testimony, and the live testimony of ALLTEL's witness and Commission Staff's witness, together with all other evidence presented in this proceeding, ALLTEL meets the prerequisites for ETC designation including a finding that such designation is in the public interest, as appropriate.

Moreover, with respect to the non-rural centers at issue, all of the non-rural wire centers are located in the service area of Qwest Communications ("Qwest"). Qwest did not intervene in this docket or oppose ETC designation for ALLTEL in those wire centers. Because ALLTEL satisfies

1 the requirements of Section 214(e)(2) for the non-rural areas, designation of ALLTEL as an ETC  
2 for those areas is proper, without the need for further public interest analysis. See 47 U.S.C.  
3 §214(e)(6).

4 With respect to the rural wire centers at issue, ALLTEL has demonstrated (and Staff has  
5 concurred) that ALLTEL satisfies both the service prerequisites for ETC designation and the public  
6 interest. Designation of ALLTEL as an ETC in the rural areas meets each of the public interest  
7 considerations recently set forth by the FCC in its *Memorandum Opinion and Order in Virginia*  
8 *Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the*  
9 *Commonwealth of Virginia*, FCC 03-338 (January 22, 2004) ("Virginia Cellular"). (Staff Report  
10 (Ex. S-1) at 9-10, 12; Hearing Transcript ("Transcript") at 218, line 7 to 220, line 5) Moreover,  
11 Arizona consumers, including existing wireless consumers, continue to pay into the Federal  
12 Universal Service Fund ("FUSF") and designation of ALLTEL as an ETC will create an  
13 opportunity to recapture those funds for the benefit of Arizona consumers.

14 ALLTEL submits that the rural ILEC Intervenors' challenges to ALLTEL's Application boil  
15 down to: (i) an attack on the ETC certification process itself; (ii) a fear of competition and  
16 additional choice for the consumers of Arizona; and (iii) a belief that the Commission Staff  
17 conditions are inadequate to protect the interests of Arizona consumers. None of those challenges  
18 have sufficiently refuted that ALLTEL's Application is not in compliance with existing law or that  
19 it is in the public interest. Indeed, many of the arguments presented by the rural ILEC Intervenors  
20 are merely restatements of comments being made to and reviewed by the Federal-State Joint Board  
21 on Universal Service and the FCC and are intended to convince this Commission to divert from  
22 current FCC rules and practices. However, none of those challenges have rebutted the fact that  
23 ALLTEL's designation as an ETC will result in consumers being provided greater choice, mobility,  
24 and expanded calling options or that those are legitimate public interest factors to be considered.  
25 Moreover, to the extent that rural ILEC Intervenors argue that the existing ETC process should be  
26 modified, any such modifications to existing ETC requirements must be made at the federal level.

1 Given the evidence presented in this docket, ALLTEL's Application should be approved  
2 promptly, to allow ALLTEL to obtain the federal universal service funds for the greater benefit of  
3 consumers throughout ALLTEL's designated Arizona ETC area.

4 **II. ALLTEL'S APPLICATION SATISFIES EXISTING LEGAL REQUIREMENTS**  
5 **AND SHOULD BE APPROVED**

6 The evidence presented in this proceeding demonstrates that ALLTEL's Application  
7 satisfies the existing requirements to obtain ETC designation, including a finding that such an  
8 Application is in the public interest in the requested rural service areas. Accordingly, ALLTEL's  
9 Application is proper and should be approved.

10 **A. Section 214(e) establishes the criteria to be satisfied for ETC designation.**

11 In order to determine whether ALLTEL's Application satisfies existing legal criteria, it is  
12 necessary to discuss what those requirements are (and not as the ILECs have tried to misrepresent  
13 them). To begin, §214(e)(2) of the Communications Act of 1934, as amended, 47 U.S.C.  
14 §214(e)(6), provides as follows:

15 In the case of a common carrier providing telephone exchange service and  
16 exchange access that is not subject to the jurisdiction of a State  
17 commission, the Commission shall upon request designate such a common  
18 carrier that meets the requirements of paragraph (1) as an eligible  
19 telecommunications carrier for a service area designated by the  
20 Commission consistent with applicable Federal and State law. Upon  
21 request and consistent with the public interest, convenience and necessity,  
22 the Commission may, with respect to an area served by a rural telephone  
23 company, and shall, in the case of all other areas, designate more than one  
24 common carrier as an eligible telecommunications carrier for a service  
25 area designated under this paragraph, so long as each additional requesting  
26 carrier meets the requirements of paragraph (1). Before designating an  
27 additional eligible telecommunications carrier for an area served by a rural  
telephone company, the Commission shall find that the designation is in  
the public interest. (Emphasis added.)

25 In turn, §214(e)(1) referenced above provides as follows:

- 26 (1) A common carrier designated as an eligible telecommunications  
27 carrier under paragraph...(6) shall be eligible to receive universal  
service support in accordance with section 254 [47 USC §254] and

shall, throughout the service area for which the designation is received:

- (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) [47 USCS §254(c)], either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefore using media of general distribution. (Emphasis added.)

Thus, ALLTEL's Application must demonstrate that ALLTEL is a common carrier that will advertise and offer the supported services either through its own facilities or a combination of its own facilities and resale throughout its designated service area. Further, in the service areas of rural telecommunications carriers, ALLTEL must demonstrate that designating ALLTEL as an ETC is in the public interest.

1. **ALLTEL is a common carrier.**

Pursuant to 47 U.S.C. §153(10), a "common carrier" is a person engaged as a common carrier on a for-hire basis in interstate communications by wire or radio. Additionally, §20.9(1)7 of the Federal Communications Commission's ("FCC") Rules provides that cellular service is a common carrier service. (47 C.F.R. §20.9(a)(7); *see also*, Krajci Direct Testimony (Ex. A-2) at 6, lines 13-14) As noted in Paragraph 4 of Steve R. Mowery's Affidavit ("Affidavit") attached as Exhibit A to ALLTEL's Application (Ex. A-1), ALLTEL is a common carrier consistent with these federal provisions. (Krajci Direct Testimony (Ex. A-2) at 6, lines 9-13) Currently, ALLTEL serves approximately 330,000 wireless customers. (Transcript at 33, lines 23-24) ALLTEL is a common carrier consistent with the federal provisions set out above for purposes of obtaining ETC designation.

2. **ALLTEL has attested that it will advertise and offer the supported services through the use of its own facilities throughout its designated service areas.**

Under 47 C.F.R. §54.101(a), the FCC has identified nine services and functionalities as the

1 core services to be offered by an ETC and supported by federal universal service support  
2 mechanisms ("supported services"). As attested in the Affidavit and Lawrence Krajci's testimony,  
3 ALLTEL currently offers and is able to provide within its designated service areas the nine  
4 supported services. (Application (Ex. A-1) at ¶5 of the Affidavit)

5 The first supported service is voice-grade access to the public switched telephone network,  
6 which means the ability to make and receive telephone calls within a bandwidth of approximately  
7 2700 Hertz frequency range. (See, Federal-State Joint Board on Universal Service, CC Docket No.  
8 96-45, *First Report and Order*, 12 FCC Rcd 8776, at 8810-8811 (1997) ("*Universal Service First*  
9 *Report and Order*") ALLTEL provides such voice-grade access as the vast majority of its  
10 customers are able to make and receive telephone calls on the public switched telephone network  
11 within the specified bandwidth. (Application (Ex. A-1) at 3 and ¶5(a) of the Affidavit; Krajci  
12 Direct Testimony (Ex. A-2) at 3, lines 3-12; Transcript at 65, lines 18-25)

13 Second, beyond providing access to the public switched network, an ETC must include  
14 local usage as part of its universal service offering. Although the FCC has not quantified a  
15 minimum amount of local usage that must be required in a universal service offering, the FCC has  
16 initiated a proceeding to review this issue. (See, *Federal and State Joint Board on Universal*  
17 *Service Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC  
18 Rcd 21252 (1998) ("*October 1998 NPRM*") In the *October 1998 NPRM*, the FCC sought  
19 comments from interested parties with respect to how much, if any, local usage should be required  
20 to be provided to customers as part of a universal service offering. (*October 1998 NPRM* at  
21 21277-21281) While the FCC deferred a determination on the required amount of local usage  
22 (*Universal Service First Report and Order* at 8813), any minimum local usage requirement  
23 established by the FCC through its *October 1998 NPRM* will be applicable to all designated ETCs,  
24 and not just wireless service providers.

25 ALLTEL's least expensive local calling plan starts at \$29.95 per month. (Transcript at 67,  
26 lines 1-2) ALLTEL's current local calling plans include a certain number of designated anytime  
27 minutes. (Transcript at 67-68) Any changes in the FCC's rules with respect to local usage would  
necessitate that all ETCs (wireline and wireless) re-examine their service offerings. While the

1 rural ILEC Intervenor raise issues with respect to calling plans that consumers may consider  
2 when deciding whether to choose ALLTEL service, they do not set forth evidence that refutes the  
3 fact that ALLTEL satisfies the existing legal criteria with respect to ETC local usage. (See,  
4 *Virginia Cellular* at ¶ 20) Indeed, ALLTEL attested that once it is designated as an ETC, it will  
5 comply with all minimum local usage requirements adopted by the FCC and will meet such  
6 requirements by including local usage plans as part of its universal service offering. (Application  
7 (Ex. A-1) at ¶5(b) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at 4, lines 1-3)

8 The third supported service is dual-tone, multi-frequency ("DTMF") signaling or its  
9 functional equivalent, which is a method of signaling that facilitates the transportation of call set-  
10 up and call detail information. Consistent with the principles of competitive and technological  
11 neutrality, the FCC permits carriers to provide this supported service by providing signaling that is  
12 the functional equivalent to DTMF. (47 C.F.R. §54.101(a)(3)) ALLTEL uses out-of-band digital  
13 signaling, which is a functional equivalent to DTMF. (Application (Ex. A-1) at 3-4 and ¶5(c) of  
14 the Affidavit; Krajci Direct Testimony (Ex. A-2) at 4, lines 4-12) Specifically, out-of-band digital  
15 signaling transmits call setup and call detail information and is, therefore, a satisfactory functional  
16 equivalent for DTMF. (Transcript at 70, lines 15-18)

17 The fourth supported service, which is single-party service or its functional equivalent,  
18 requires that only one party be served by a subscriber loop or access line in contrast to a multi-  
19 party line. (*Universal Service First Report and Order* at 8810) The FCC has concluded that a  
20 wireless provider offers the equivalent of single-party service when it offers a dedicated message  
21 path for the length of a user's particular transmission. (*Universal Service First Report and Order*  
22 at 8810) ALLTEL has certified that it provides a dedicated message path throughout the duration  
23 of all customer calls in satisfaction of this element. (Application (Ex. A-1) at 4 and ¶5(d) of the  
24 Affidavit; Krajci Direct Testimony (Ex. A-2) at 4, lines 13-20)

25 Fifth, designated ETCs must provide access to emergency services, which access includes  
26 the ability to reach a public emergency service provider by dialing 911. Enhanced 911 emergency  
27 services are only required if a public emergency service provider makes arrangements with the  
local provider for the delivery of such information. ALLTEL has certified that it currently provides

1 all of its customers with access to emergency service by dialing 911 in satisfaction of the basic 911  
2 requirement and that it either provides now or will provide subscribers with enhanced 911 services  
3 in accordance with the deployment schedules agreed upon by ALLTEL and local or other  
4 governmental emergency service providers. (Application (Ex. A-1) at 4 and ¶5(e) of the Affidavit;  
5 Krajci Direct Testimony (Ex. A-2) at 4-5)

6 The sixth supported service is access to operator services, which access is defined as any  
7 automatic or live assistance provided to a consumer to arrange for the billing or completion, or  
8 both, of a telephone call. (*Universal Service First Report and Order* at 8817-8818) ALLTEL has  
9 certified that it provides all of its customers with access to operator services either itself or through  
10 arrangements with other entities (e.g., LECs, interexchange carriers ("IXCs"), etc.). (Application  
11 (Ex. A-1) at 4 and ¶5(f) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at 5, lines 4-9)

12 The seventh supported service is access to interexchange service to make and receive toll or  
13 interexchange calls. However, equal access to interexchange service is not required by the FCC.  
14 (*Universal Service First Report and Order* at 8819; Transcript at 71, lines 5-7) ALLTEL has  
15 certified that it currently provides all of its customers with the ability to make and receive  
16 interexchange or toll calls through ALLTEL's direct interconnection arrangements with IXCs.  
17 (Application (Ex. A-1) at 5 and ¶5(g) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at 5, lines  
18 10-17)

19 The eighth supported service is access to directory assistance, which means the ability to  
20 place a call to directory assistance. (*Universal Service First Report and Order* at 8821) ALLTEL  
21 has certified that it provides all of its customers with access to directory assistance by dialing "411"  
22 or "555-1212" in satisfaction of this requirement. (Application (Ex. A-1) at 5 and ¶5(h) of the  
23 Affidavit; Krajci Direct Testimony (Ex. A-2) at 5, lines 18-21)

24 The ninth and final supported service is toll limitation for qualifying low-income  
25 consumers, whereby ETCs offer either toll control or toll blocking services to qualifying Lifeline  
26 consumers at no charge. Pursuant to 47 C.F.R. §54.101(a)(9), the FCC no longer requires ETCs to  
27 provide both toll control and toll blocking as part of the toll limitation service. (*See Universal*



1 *Service Fourth Order on Reconsideration*, CC Docket No. 96-45 and *Report and Order* in CC  
2 Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997)) All ETCs must  
3 provide toll blocking, thereby allowing customers to block the completion of outgoing toll calls.  
4 (*Universal Service First Report and Order* at 8821-8822) Since only carriers designated as ETCs  
5 can participate in Lifeline, ALLTEL does not currently have any Arizona Lifeline customers. (*See*,  
6 47 C.F.R. §54.400-415.) However, ALLTEL has attested that once designated as an ETC, it will  
7 participate in the Lifeline program as required and will provide toll blocking in satisfaction of the  
8 FCC's requirement. (Application (Ex. A-1) at ¶5(i) of the Affidavit; Krajci Direct Testimony (Ex.  
9 A-2) at 5-6) In particular, ALLTEL can block 1+ 900 and 1+ 800 calls. (Transcript at 72, lines 22-  
10 25) ALLTEL has certified that it currently possesses the technology to provide toll blocking and  
11 will use this technology to provide the service to its Lifeline customers at no charge as part of its  
12 universal service offering. (Application (Ex. A-1) at 5 and ¶5(i) of the Affidavit; Krajci Direct  
13 Testimony (Ex. A-2) at 5-6)

14 Thus, as certified by ALLTEL and acknowledged by Commission Staff, ALLTEL currently  
15 provides (or will provide in the case of Lifeline) these nine supported services throughout its  
16 licensed service area in the State of Arizona. (Application (Ex. A-1) at 1; Staff Report (Ex. S-1) at  
17 5) Although §214(e)(1)(A) states that these supported services may be provided either through a  
18 carrier's own facilities or a combination of facilities and resale of another's services, ALLTEL has  
19 certified that it will provide the supported services using its existing network infrastructure.  
20 (Application (Ex. A-1) at 5-6 and ¶6 of the Affidavit) This infrastructure includes, but is not  
21 limited to, the antenna, cell-sites, towers, trunking, mobile switching, and interconnection facilities  
22 that ALLTEL uses today to serve its existing conventional mobile cellular service customers.  
23 (Application (Ex. A-1) at 6 and ¶6 of the Affidavit) Obviously, with the available federal universal  
24 service funds, additional facilities of this sort will be constructed. As ALLTEL noted, receipt of  
25 universal service funds will allow it to expand into the rural areas of its service areas. (Transcript at  
26 24, lines 17-22; at 28, lines 15-24.)

27 ALLTEL has certified that, consistent with §214(e)(1), it will provide the supported

1 services throughout its designated service areas. (Application (Ex. A-1) at 1) Pursuant to FCC  
2 regulations, a "service area" is a geographic area established by a state commission for the purpose  
3 of determining universal service obligations and support mechanisms. (47 C.F.R. §54.207(a).) For  
4 non-rural service areas, there are no restrictions with respect to how a state commission may define  
5 the service area for purposes of designating a competitive ETC. For rural service areas, the FCC's  
6 rules define "service area" to mean the LEC study area unless a different definition of service area  
7 is established for the company. (47 C.F.R. §207(b).)

8 As ALLTEL is not a rural telephone company under 47 U.S.C. §153(37) with respect to its  
9 wireless operations, ALLTEL must describe the geographic area throughout which it requests ETC  
10 designation. (*See, §214(e)(6) Public Notice*, 12 FCC Rcd at 22949.) ALLTEL has requested ETC  
11 designation for its Arizona licensed service areas in the nonrural wire centers of Qwest (Staff  
12 Report at 6) and the rural wire centers of Accipiter Communications, Inc., Gila River Telecomm  
13 Inc., San Carlos Apache Telecommunications, Tohono O'Odham Utility Authority, Arizona  
14 Telephone Company (partial study area), CenturyTel of the Southwest, Inc. (partial study area),  
15 Citizens Telecommunications Company of the White Mountains d/b/a Frontier Communications of  
16 the White Mountains (partial study area), Midvale Telephone Exchange, Inc. (partial study area),  
17 Navajo Communications Company (partial study area), South Central Utah Telephone Association  
18 (partial study area), and Table Top Telephone Company (partial study area). (Staff Report (Ex. S-1)  
19 at 6) It is throughout these service areas that ALLTEL has certified that it will provide the  
20 supported services. (Application (Ex. A-1) at ¶2 of the Affidavit)

21 Finally, in order to satisfy the requirements of §214(e)(1), ALLTEL must advertise the  
22 availability of the supported services and the associated charges using media of general distribution  
23 in compliance with §214(e)(1)(B). ALLTEL currently advertises its wireless services through  
24 various media forms and will use these media of general distribution that it currently employees in  
25 order to also advertise its universal service offerings throughout its designated service areas.  
26 (Application (Ex. A-1) at 6; Krajci Direct Testimony (Ex. A-2) at 6, lines 15-18; Staff Report (Ex.  
27 S-1) at 5)

Consistent with §214(e)(1), ALLTEL has sufficiently proven and certified that it will advertise and offer the supported services through the use of its own facilities throughout its designated service areas. While the rural ILEC Intervenor questioned whether Commission Staff had independently evaluated ALLTEL's network capabilities or simply relied on ALLTEL's statements, they did not set forth any evidence demonstrating that such an independent evaluation was required or otherwise warranted. Indeed, that is not the standard required in analysis of ETC applications. (See, *Virginia Cellular* at ¶14-25 (relying on the statements and commitments of applicant in assessing whether supported services were to be offered and advertised) As these criteria outlined above are the only ones applicable to ALLTEL's Application in Qwest's non-rural service areas and as ALLTEL has clearly satisfied these criteria, the Commission may designate ALLTEL as an ETC in the Qwest service areas without regard to the public interest finding discussed below.

**3. It is in the public interest to designate ALLTEL as an ETC in the rural areas included in the Application.**

Although the discussion thus far has shown that ALLTEL is a common carrier that meets the criteria set forth in §214(e)(1) and that this criteria alone is sufficient to designate ALLTEL as an ETC in the Qwest non-rural areas, a discussion of public interest is necessary in determining whether the criteria have been met for designating ALLTEL as an ETC in rural service areas. (47 U.S.C. §214(e)(6)) The evidence presented in this proceeding has demonstrated that ALLTEL's Application is in the public interest.

Despite the rural ILEC Intervenor's allegations (which amount to little more than a general fear of competition and attempts to have this Commission prematurely rewrite FCC ETC rules), ALLTEL has demonstrated that its Application will bring competition to rural areas and result in greater choice, mobility, and expanded calling options for customers and, therefore, that the Application is in the public interest. In explaining that public interest involves offering more such choices to customers, ALLTEL's witness noted:

"Any service that a carrier – whether it be wireline or wireless – provides above and beyond [the nine core ETC services] enables a customers to have more choice as to who the service

1 provider would be.” (Transcript at 86, lines 5-8)

2 Public benefit certainly begins with additional customer choices for Arizona telephone  
3 users. Indeed, one of the principal goals of the Act is to "promote competition and reduce  
4 regulation in order to secure lower prices and higher quality services for American  
5 telecommunications consumers and encourage the rapid deployment of new telecommunications  
6 technologies." (Telecommunications Act of 1996, Public Law, 104, 100 Stat. 56 (1996)) The FCC  
7 has also recognized the advantages that wireless carriers bring to the universal service program and  
8 found that imposing additional burdens on wireless entrants would be particularly harmful to  
9 competition in rural areas where wireless carriers could potentially offer service at much lower  
10 costs than traditional wireline service. (*Universal Service First Report and Order* at 8881-8882) In  
11 short, Congress and the FCC believe competition to be in the public interest. This is a reasonable  
12 conclusion given that competition expands consumers' choices and generally results in lower prices  
13 and advanced technologies.

14 ALLTEL has shown that upon being designated an ETC, it will bring competition to rural  
15 Arizona consumers who might otherwise not have the opportunity to experience the benefits of  
16 competition. ALLTEL will use high-cost monies to build out network infrastructure in rural areas  
17 of Arizona. (Transcript at 88, lines 15-18) With the federal high cost support, ALLTEL will be  
18 able to expand its facilities to make wireless service a viable replacement for wireline service in  
19 more areas of Arizona. Additionally, Commission Staff acknowledged that “cream skimming” was  
20 not a concern in this proceeding as ALLTEL has based its ETC requested areas on its licensed  
21 service areas – not where the lowest cost exchanges exist. (Staff Report (Ex. S-1) at 7)  
22 Commission Staff also emphasized that the rural ILECs possess the ability to disaggregate their  
23 study areas to enable support to be targeted below a study area level. (*Id.* at 11)

24 Moreover, the record confirms that ALLTEL’s application meets recently clarified public  
25 interest considerations. In its *Memorandum Opinion and Order* released January 22, 2004 in  
26 *Virginia Cellular*, the FCC elaborated on the concept of “public interest” and stated that the burden  
27 of proof in determining whether the public interest is served is upon the ETC applicant. (*Virginia*

1 *Cellular* at ¶26) The FCC instructed that the benefits and costs balancing considerations it  
2 employed were a fact-specific exercise. (*Id.* at ¶28) Specifically, the FCC considered the following  
3 factors: (1) the benefits of increased competitive choice, (2) the impact of the ETC designation on  
4 the universal service fund, (3) the unique advantages and disadvantages of the competitor's service  
5 offering, (4) any commitments made regarding the quality of telephone service, and (5) the  
6 competitive ETC's ability to satisfy its obligation to serve the designated service areas within a  
7 reasonable time frame. (*Id.*) The FCC further identified specific aspects of wireless service  
8 offerings that provide benefits to the consumers and serve the public interest. (*Id.* at ¶29)

9 Indeed, these FCC considerations are consistent with the standard that was applied by the  
10 Arizona Commission Staff to conclude that ALLTEL's Application is in the public interest.  
11 (Transcript at 262 at lines 6-10; *see also* Staff Report (Ex. S-1) at 9-13) First, it was established  
12 that ALLTEL will offer Arizona the benefits of increased choices including mobility for  
13 consumers, better access to emergency services, mitigation of public safety risks, and eliminate  
14 geographic isolation (Transcript at 219, lines 3-21), lower toll costs from expanded calling areas  
15 beyond those offered by rural ILECs (Transcript at 219, lines 22-25), and new technologies like  
16 Internet service and text messaging (Transcript at 88, lines 1-4). As noted by Commission Staff's  
17 witness, ALLTEL's use of the funds will allow ALLTEL to provide additional service or improved  
18 existing service to rural customers. (Transcript at 218, lines 7-16) Staff identified similar benefits  
19 in its Staff Report, including increased consumer choice, increased competition, increase local  
20 calling areas, increased mobility and access to advanced services. (Staff Report (Ex. S-1) at 10)  
21 These benefits meet the factors identified in *Virginia Cellular* (at ¶29).

22 Second, the record demonstrates that designating ALLTEL as an ETC will have minimal to  
23 no impact on the federal universal service fund. (Transcript at 27, lines 5-18) In fact, only less than  
24 seven percent of the fund currently is attributable to competitive ETCs like ALLTEL. (Transcript at  
25 116, lines 20-22) Any universal service surcharge increase resulting from ALLTEL's Arizona  
26 ETC designation would be spread across consumers throughout the country. (Transcript at 27, lines  
27 5-18) Moreover, designating ALLTEL as an ETC will not reduce the amount of FUSF available to

1 rural ILECs. (Transcript at 27, line 19 to 28, line 3; at 241, lines 6-17) On the other hand, failure to  
2 designate ALLTEL as an ETC in Arizona will not save Arizona consumers an amount of FUSF  
3 surcharges equal to what ALLTEL would have recaptured for use in Arizona. (Transcript at 366,  
4 lines 10-15).

5 Third and fourth, ALLTEL's service offering is uniquely advantageous as it offers Arizona  
6 customers increased choice over existing wireline or wireless service from a carrier who is  
7 committed to using the funds to build out new infrastructure to rural areas. (Transcript at 88, lines  
8 15-18) Additionally, ALLTEL's service offering would encompass and be based on the following  
9 commitments: (a) filing informational tariffs outlining all of the services included in ALLTEL's  
10 promotional materials (Transcript at 98, lines 1-5); (b) working with Commission Staff to develop  
11 a complaint resolution process with respect to ALLTEL's Lifeline service offering (Transcript at  
12 99, lines 2-5) and complying with the Commission's customer service and termination of service  
13 rules with respect to Lifeline and Link-Up services (Transcript at 125, lines 1-3); (c) honoring the  
14 CTIA wireless industry code of conduct as to customer service (Transcript at 103, lines 8-12); (d)  
15 cooperating with Commission Staff with respect to expenditure audits (Transcript at 126, lines 14-  
16 17); (e) submitting an annual self-certification with respect to how funds were being utilized in  
17 Arizona (Transcript at 127, lines 16-19); (f) filing service area maps pursuant to confidential  
18 protection (Transcript at 124, lines 11-13 and 149, lines 2-3); and (g) providing service quality data  
19 upon request from Commission Staff (Transcript at 124, lines 14-16). Indeed, all of Staff's  
20 recommended conditions will ensure that consumers are protected and that the public interest will  
21 be served by ALLTEL's ETC designation. Moreover, Staff noted that ALLTEL has received  
22 awards and recognition for its wireless service customer satisfaction in the Phoenix area and from  
23 readers of the *Arizona Business Magazine* and that ALLTEL uses a Language Line vendor capable  
24 of providing Spanish services to non-English speaking residents of the Native American  
25 communities. (Staff Report (Ex. S-1) at 11)

26 Fifth and finally, ALLTEL has demonstrated its ability to satisfy its obligation to serve the  
27 designated service areas within a reasonable time frame. Specifically, ALLTEL has committed to

1 using all federal high-cost support for the maintenance, construction, and upgrading of the facilities  
2 serving the areas in which ALLTEL is certified. (Transcript at 105, lines 11-14) Additionally,  
3 ALLTEL agreed to offer Lifeline and Link-up services to qualifying low income applicants within  
4 ninety days of a decision in this matter. (Transcript at 97, lines 5-14) The benefit of Lifeline and  
5 Link-Up services can be realized almost immediately because ALLTEL already has extensive  
6 coverage in its service area. (Transcript at 128, lines 7-21)

7 The Commission can monitor and enforce ALLTEL's commitment to follow the FCC's  
8 ETC rules in several ways. To begin, the Commission Staff can regularly review the documents  
9 referenced above (including the maps, annual self-certifications, audit reports, and requested  
10 customer service data) in order to monitor and ensure ALLTEL's compliance. Again, the  
11 Commission staff's recommended conditions allow the Commission to monitor and enforce such  
12 compliance. Moreover, ALLTEL has committed to complying with the Commission's customer  
13 service and termination of service rules with respect to Lifeline and Link-Up services. In the most  
14 extreme of cases, the Commission could issue a show-cause order (Transcript at 267, lines 17-19)  
15 or revoke ALLTEL's ETC designation upon a finding that ALLTEL has failed to meet the  
16 applicable ETC criteria with respect to provision of the nine core services (Transcript at 102, lines  
17 6-9) or the conditions set forth in the Commission decision designating ALLTEL as an ETC.  
18 When considering all of these factors as a whole, ALLTEL's Application clearly is in the public  
19 interest of Arizona telecommunications consumers.

20 **B. Criteria outside existing ETC law should not be considered in determining**  
21 **whether ALLTEL has met the requirements to be designated as an ETC in the**  
22 **requested areas.**

23 In an effort to thwart ALLTEL's Application and additional consumer choice and  
24 competition and to block the use of FUSF funds in Arizona -- even though Arizona consumers will  
25 continue to pay FUSF surcharges -- the rural ILEC Intervenors have raised various points that  
26 ALLTEL submits are not relevant to this proceeding. ALLTEL's Application for ETC designation  
27 is a straightforward request to be considered by this Commission under existing laws, rules, and  
procedures. The criteria to be employed in examining the Petition have been established by the

1 FCC in 47 U.S.C. §214(e), and, as discussed in Section II.A of this Brief above, ALLTEL has  
2 demonstrated that it meets those criteria.

3 Moreover, many of the rural ILEC Intervenor's concerns are addressed and ameliorated by  
4 the Staff's recommended conditions. Those conditions allow ALLTEL to bring FUSF funds into  
5 Arizona for the benefit of Arizona consumers while ensuring that the funds continue to be used  
6 properly. Ongoing monitoring by the Commission will ensure that Arizona consumers can – and  
7 will continue to – realize benefits from FUSF.

8 Finally, the rural ILEC Intervenor's have raised numerous contentions about how the federal  
9 ETC designation process and FUSF funding should be changed. However, until such changes are  
10 made at the federal level, ALLTEL and Arizona consumers should not be precluded from access to  
11 FUSF on the basis of what the future may or may not bring.

12 **1. Wireless ETCs should not be subjected to full ILEC regulation because**  
13 **wireless ETC service was never intended to replicate ILEC service.**

14 The rural ILEC Intervenor's appear to suggest that ALLTEL as a wireless ETC should be  
15 held to the same regulation as the ILECs and have questioned the Commission's jurisdiction over  
16 particular elements of ALLTEL's wireless service. The ILECs' fears ignore that this proceeding is  
17 about ETC designation, not carrier regulation. To the extent that the ILECs seek to place  
18 competitive ETCs or wireless ETCs on equal footing by the imposition of ILEC regulation on those  
19 ETCs, that argument is misplaced. The Act establishes requirements that all carriers (whether  
20 wireline or wireless) must meet in order to be designated as ETCs. (47 U.S.C. §214(e).) For  
21 purposes of approving ALLTEL's Application, this Commission need concern itself only with  
22 these specific ETC requirements.

23 Further, given the inherent differences between wireline and wireless service, wireless  
24 service (particularly wireless ETC service) was never intended to exactly replicate the service of an  
25 ILEC. (Transcript at 133, lines 13-17) Recognizing these differences, the FCC established ETC  
26 criteria that can be met by wireless providers and that provide consumers the benefit of competitive  
27 choice. Wireless service is not by its nature exactly the same as wireline service, nor should it be.



1 Indeed, none of the rural ILEC Intervenor herein have alleged that ILECs should be matching the  
2 wireless offerings of portability or statewide local calling. Very simply, it is not "apples to apples."  
3 (Transcript at 236, lines 23-25)

4 In its September 11, 2003 Order approving ALLTEL's application for ETC  
5 designation in Michigan, the Michigan Public Service Commission ("Michigan  
6 Commission") addressed and dismissed a similar argument presented by opposing parties.  
7 (*In the Matter of the Application of ALLTEL Communications, Inc. for Designation as an*  
8 *Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Commissions Act*  
9 *of 1934*, Case No. U-13765, Opinion and Order (September 11, 2003) ("*Michigan Order*")  
10 The Michigan Commission rejected these arguments and stated as follows:

11 In response to the argument that wireless service providers are not subject  
12 to the same regulations designed to protect customers, the Commission  
13 finds sufficient protection for customers in their right to choose not to use  
14 wireless service and to choose from whom to take service. *To the extent*  
15 *that the opposing parties are concerned about the effects on themselves of*  
16 *competition from wireless carriers, the Commission does not agree that*  
17 *the public interest requires that they be protected from competition.*  
18 (Emphasis added.)

19 (*Michigan Order* at 12) Like the Michigan Commission, the Arizona Commission should conclude  
20 that the fact that consumers can choose not to subscribe to ALLTEL's wireless ETC service  
21 provides sufficient protection with respect to ALLTEL not being subject to traditional ILEC  
22 regulation. Additionally, like the Michigan Commission, the Arizona Commission should see this  
23 argument for what it really is – an assertion that some ILECs should be shielded from increased  
24 competition by wireless providers. Such a claim is not consistent with the competitive goals of the  
25 Act.

26 Once ALLTEL is designated as an ETC, the competitive benefits that will accrue to  
27 customers include the facts that they will have another carrier to look to for their communications  
needs and one that can offer additional services beyond those offered by the ILEC. Some  
customers value larger calling scopes and mobility more than equal access or unlimited local usage,  
and Arizona customers in ALLTEL's designated service areas will be provided such expanded

1 choices upon ALLTEL's designation as an ETC. (See, Transcript at 236-237, confirming that  
2 Commission Staff believes it depends upon the individual consumers, their telecommunications  
3 choices, and their personal needs evaluations) While comparisons of ILEC and wireless services  
4 may be factors consumers should consider when evaluating which provider to select, they are  
5 certainly not indications of whether ALLTEL's Application is in the public interest.

6 Finally, the recommended conditions set forth by Staff will act to protect consumers and  
7 ensure proper use of the FUSF by ALLTEL. Those conditions should not be further modified to  
8 lessen the impact on increased competition on the rural ILECS.

9  
10 **2. Rural ILEC Intervenor's perceived flaws in the existing ETC/FUSF**  
11 **program do not overcome a finding that ALLTEL's Application is in**  
12 **the public interest based on the existing law.**

13 The rural ILEC Intervenor's argue that this Commission should withhold approval  
14 (potentially for one year) of ALLTEL's Application pending further developments with respect to  
15 proposed recommendations issued by the Federal-State Joint Board on Universal Service ("the  
16 Joint Board"). However, attempts to apply the Joint Board's recommendations to this proceeding  
17 are improper and premature. Although the Joint Board has released its proposed recommendations  
18 with respect to ETC criteria, the recommendations are merely that. They are not law or binding  
19 regulations. Indeed, Commission Staff acknowledged that there is no way for parties herein to  
20 know what the FCC will ultimately decide to do (if anything) with the recommendations. Further,  
21 the Commission Staff was aware of the possibility that there could be future changes in the FCC's  
22 ETC rules and issued its report in support of ALLTEL's Application nonetheless because Staff and  
23 ALLTEL both recognize that whatever changes are ultimately enacted by the FCC would be  
24 applicable to all ETCs, including ALLTEL. (Transcript at 95, lines 17-20; at 130-131; at 242-243)  
25 Waiting for something that may or may not happen, will deprive ALLTEL and Arizona consumers  
26 of the benefits of increased FUSF funds to expand and improve Arizona infrastructure. (Transcript  
27 at 95-96; at 130, lines 9-19)

1                   **3.     Public interest does not mandate that ALLTEL's Application include**  
2                   **detailed advanced construction plans.**

3                   The rural ILEC Intervenors repeatedly questioned whether ALLTEL's capital budgets would  
4 change given its ETC designation (and how the Commission could ensure ALLTEL's Application  
5 was in the public interest without the submission of detailed advanced construction plans. As  
6 ALLTEL explained, it continuously evaluates its coverage areas and targets funds for construction,  
7 expansion, operation, and maintenance of facilities just as the ILEC ETCs do today. (Transcript at  
8 61 -62) Future construction plans may change based on changes in consumer need, demands for  
9 service or other unforeseen variables. (Transcript at 131-132) ALLTEL agreed to Commission  
10 audit of its expenditures and to annually self-certify that it is using the funds in the manner in which  
11 they are intended to be used. (Transcript at 57, lines 8-12) Indeed, such monitoring is a more  
12 appropriate mechanism for ensuring that construction using FUSF is being done appropriately and  
13 will be effective for years into the future. (Transcript at 132-133) Attempts to make ALLTEL's  
14 Application dependent of specific construction plans are inappropriate and not consistent with  
15 existing ETC regulations.

16                   **III.     LEGAL ISSUES REGARDING ETC DESIGNATION**

17                   During the course of the hearing, several legal issues were raised concerning ETC  
18 designation and the use of FUSF. ALLTEL hereby addresses those issues:

19                   **1.     Can the Arizona Corporation Commission limit where and how the**  
20                   **FUSF are spent?**

21                   ALLTEL understands this concern to address whether the ACC can direct that the FUSF  
22 received from rural service areas be spent in rural service areas. ALLTEL agrees that it will spend  
23 rural FUSF in rural areas and will abide by Commission Staff's revised Recommendation No. 9 in  
24 particular.

25                   **2.     How does the FCC require that FUSF funds be used?**

26                   The FUSF requirements are set forth generally in Section 254(e) of the Act. However,  
27 given ALLTEL's representation in No. 1 above, further analysis on the FCC requirements, to the

1 extent they exist, appears unnecessary at this time, although ALLTEL reserves its right to further  
2 address this issue as necessary.

3 **3. How can the ACC enforce ALLTEL's commitment to follow FCC**  
4 **requirements for expenditure of FUSF funds?**

5 ALLTEL has a legal obligation to adhere to federal requirements concerning use of the  
6 FUSF funds. See *Virginia Cellular*, para. 46. The Commission could enforce ALLTEL's  
7 obligation in several ways, including inclusion of a condition in the Commission's decision, which  
8 could then be the subject of a proceeding before the ACC for non-compliance or reporting non-  
9 compliance with FCC requirements to the FCC.

10 **4. Can the ACC revoke ALLTEL's ETC status?**

11 If ALLTEL does not comply with the Commission decision designating ALLTEL as an  
12 ETC, the Commission could revoke the ETC designation, assuming appropriate due process.

13 **IV. CONCLUSION**

14 The questions to be answered before approving ALLTEL's Application are threefold. First,  
15 is ALLTEL a common carrier? Second, does or will ALLTEL advertise and offer the supported  
16 services throughout its designated service area? Third, with respect to those areas served by rural  
17 telephone companies, is it in the public interest to designate ALLTEL as an ETC?

18 The evidence in this docket proves that ALLTEL has satisfied all of the criteria necessary to  
19 obtain ETC designation. ALLTEL requests that this Commission promptly approve ALLTEL's  
20 Application for ETC designation.

1 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of March, 2004.

2 ALLTEL COMMUNICATIONS, INC.

3  
4 By 

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